

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CURWOOD PRICE,

Plaintiff,

Case No. 1:10-cv-374

v

HON. JANET T. NEFF

DUNCAN HOWARD, et al.,

Defendants.

OPINION AND ORDER

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983. The matter is presently before the Court on Plaintiff's "Reconsideration and Objection to Magistrate's Report and Recommendation" (Dkt 142). In his filing, Plaintiff includes two distinct matters. First, Plaintiff appeals the Magistrate Judge's January 26, 2011 Order (Dkt 136), in which the Magistrate Judge denied Plaintiff's Motion to Strike (Dkt 94) and Plaintiff's Second Motion to Strike (Dkt 121). Second, Plaintiff presents objections to the Magistrate Judge's Report and Recommendation (Dkt 138), also issued on January 26, 2011, in which the Magistrate Judge recommended that the Court deny Plaintiff's Emergency Motion for Protective Order (Dkt 127). In accordance with 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(a) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made and has reviewed the Magistrate Judge's Order to determine whether it is clearly erroneous or contrary to law. The Court denies the objections, denies the appeal, and issues this Opinion and Order.

A. Appeal of January 26, 2011 Order (Dkt 136)

Plaintiff first appeals the Magistrate Judge's Order denying Plaintiff's motions to strike Defendants' Answer and Defendants' Motion to Dismiss (Dkt 142 at 1-2; Dkt 136 at 1). Plaintiff asserts that the Magistrate Judge's Order was based on the Magistrate Judge's finding that Plaintiff is not entitled to default judgment (Dkt 142 at 1-2; Dkt 133). Plaintiff points out that he has filed an objection to the Magistrate Judge's Report and Recommendation regarding the issue of default and argues that the Order denying his motions is premature until the Court has addressed those objections (Dkt 142 at 2). The Court has since, in a separate Opinion and Order (Dkt 152), denied Plaintiff's Objections (Dkt 139) and adopted the Magistrate Judge's Report and Recommendation (Dkt 133) denying Plaintiff's motions seeking default judgment. For this reason, Plaintiff's appeal is moot and is, therefore, denied.

B. Objections to the Report and Recommendation (Dkt 138)

Plaintiff asserts three objections to the Magistrate Judge's Report and Recommendation. First, Plaintiff asserts that the Magistrate Judge improperly "recharacterized his pleadings into an injunction instead of the motion for protective order" (Dkt 142 at 2). Plaintiff's objection is without merit. The Magistrate Judge correctly noted that, in his motion, Plaintiff did "not request any particular form of relief" and, that he left the relief to the Court's discretion and judgment (Dkt 138 at 1-2; *see* Dkt 127 at 4). Under the circumstances, the Magistrate Judge properly considered Plaintiff's motion as a request for injunctive relief. Plaintiff's objection fails to specify what remedy he is seeking, if not injunctive relief (*see* Dkt 142 at 2). Plaintiff's objection is, therefore, denied.

Plaintiff's next objection appears to be that the Magistrate Judge erred in finding that "Plaintiff has failed to demonstrate that any of his various allegations have merit or that he has

suffered (or will suffer) any injury for which he has no legal remedy” (Dkt 138 at 2). Plaintiff fails to identify any factual error in the Magistrate Judge’s analysis, but appears to argue that the Magistrate Judge failed to properly consider the allegations as required by the Federal Rules of Evidence and in light of his status as a pro se litigant (Dkt 142 at 2-3).¹ Plaintiff then supplements his objection with four new exhibits (*id.* at 3). These exhibits consist of (1) a Verified Statement of Events from 1/10/11 to 1/13/11 containing Plaintiff’s new factual allegations that he was transported, against his wishes, to a hospital in Jackson, Michigan, where he was asked to consent to a colonoscopy that he had not requested; (2) copies of two letters written by Plaintiff alleging that he was transported to a hospital in Jackson, Michigan in violation of this Court’s June 4, 2010 Order (Dkt 30); and (3) copies of three memos notifying prisoners of planned changes to the Kosher menu (*see* Dkt 142, Exs. A - D).

Plaintiff’s objection is without merit. The Magistrate Judge considered Plaintiff’s allegations in the context of the factors that the Court must consider when determining whether to grant injunctive relief. The Magistrate Judge properly found that Plaintiff had failed to show that “injunctive” relief was warranted based on the applicable standards (Dkt 138 at 2-3). Plaintiff has shown no factual or legal grounds for a different result. As such, Plaintiff’s objection is denied.

Plaintiff also generally objects that he is “not receiving any of the necessary judicial solicitude or assistance that has been required for pro se prisoner[s] ... ,” particularly with regard to the presentation and consideration of his evidentiary documentation thus far in this case (Dkt 142 at 3-4). Contrary to Plaintiff’s assertions, the Magistrate Judge and this Court have endeavored to fully consider Plaintiff’s arguments and evidentiary support. In any event, Plaintiff fails to articulate

¹Plaintiff specifically references Federal Rules of Evidence 301, 401, 402, and 406.

a specific objection requiring de novo review by this Court. *See Mira v. Marshall*, 806 F.2d 636, 637-38 (6th Cir. 1986).

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 210-11 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 142) are DENIED and the Report and Recommendation (Dkt 138) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Emergency Motion for Protective Order (Dkt 127) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Appeal of the January 26, 2011 Order (Dkt 142) is DENIED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of this Opinion and Order would not be taken in good faith.

Dated: August 1, 2011

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge